

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF NEW YORK
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6 UNITED STATES OF AMERICA,)
7 ex rel. THE SAINT REGIS)
8 MOHAWK TRIBE,)
9) Case No.
10 Plaintiff,) 02-CV-0845
11) (TJM) (DEP)
12 vs.)
13)
14 PRESIDENT R.C.-ST. REGIS)
15 MANAGEMENT COMPANY and)
16 ANDERSON-BLAKE CONSTRUCTION)
17 CORPORATION,)
18 Defendants.)
19 -----)

20
21
22
23 * CONTAINS CONFIDENTIAL PORTIONS *
24

25 DEPOSITION OF IVAN KAUFMAN
New York, New York
Thursday, April 29, 2004

26 Reported by:
27 KRISTIN KOCH, RPR
28 JOB NO. 1168

<p style="text-align: right;">Page 18</p> <p>1 Kaufman 2 tell me, Mr. Kaufman. I am just trying to 3 gather information here today. 4 Now, how much money would you 5 estimate that you, and I am including yourself 6 personally and your entities, has lent to 7 Mr. Melius and his entities over the years 8 since the initial loan? 9 MS. GASTWIRTH: Objection. 10 A. I'd say greater than 50 million. 11 Q. What was the largest outstanding 12 loan balance at any one time that ever existed? 13 I understand that that was over a period of 14 time, but what was the most that he ever owed 15 you at one time? 16 A. Aggregate or a single asset? 17 Q. In the aggregate. 18 MS. GASTWIRTH: You are asking for 19 today? 20 Q. I am saying over the entire time 21 period that you, including yourself and your 22 entities, has lent money to Mr. Melius and his 23 entities, what's the most money he ever owed 24 you in the aggregate at any one time? 25 MS. GASTWIRTH: Objection.</p>	<p style="text-align: right;">Page 19</p> <p>1 Kaufman 2 Go ahead. 3 A. I don't recall. 4 Q. Did he ever owe you \$50 million at 5 one time? 6 A. No. 7 Q. 25 million? 8 A. Perhaps. 9 Q. How much does he owe you today? 10 When I say "he," I am referring to Mr. Melius 11 or any entities that he owns or controls. 12 A. I don't know. 13 Q. Is it more than 10 million? 14 A. I don't believe so. 15 Q. It's somewhere between 5 and 10 16 million? 17 A. I'm not sure. 18 Q. What was the most recent time that 19 you or any of your entities lent money to 20 Mr. Melius or any of his entities? 21 MS. GASTWIRTH: Objection. I think 22 that's going beyond the periods -- 23 MR. SEFF: Well, we don't know that. 24 MS. GASTWIRTH: Beyond the Complaint 25 and the initiation of his Complaint.</p>
<p style="text-align: right;">Page 20</p> <p>1 Kaufman 2 MR. SEFF: We don't know that until 3 we hear the answer. The answer may not be 4 beyond the period. 5 MS. GASTWIRTH: I have an objection. 6 MR. SEFF: You can answer if you 7 understand the question. 8 A. What was the question? 9 Q. The question was: What was the most 10 recent time that you, meaning you or any of 11 your entities, lent money to Mr. Melius or any 12 of his entities? 13 A. We have an ongoing relationship with 14 Mr. Melius, a lending relationship. 15 Q. You have an ongoing lending 16 relationship; is that right? 17 A. Correct. We have an outstanding 18 relationship with him as a borrower, so there 19 are loans outstanding to Mr. Melius. 20 Q. Is there any particular service that 21 you provide, you and your lending entities, 22 that Mr. Melius can get in terms of loan 23 borrowing that he couldn't get from a bank? 24 MS. GASTWIRTH: Objection. 25 Q. What is the reason why Mr. Melius</p>	<p style="text-align: right;">Page 21</p> <p>1 Kaufman 2 comes to you to borrow money, if you know? 3 MS. GASTWIRTH: Objection. 4 A. That's a ridiculous question. 5 Q. Well, he could borrow money 6 presumably from any number of lenders. What is 7 it about you and your companies that he comes 8 to? 9 MS. GASTWIRTH: Objection. 10 A. We lend billions of dollars. There 11 are reasons why people come to us. We are 12 competitive. 13 Q. Do you offer lower interest rates? 14 What do you offer to compete in the 15 marketplace? 16 MS. GASTWIRTH: Objection. 17 A. I don't know. 18 Q. Now, can you describe the various 19 projects or identify the various projects that 20 you have lent Mr. Melius money for over the 21 years? 22 A. Generally I could talk about some of 23 them. I don't know all of them, but I could 24 talk about some of them. 25 Q. Why don't you list the ones that you</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 38</p> <p>1 Kaufman 2 him, did you ever come to learn why it was that 3 the NIGC refused to allow him to have a 4 financial interest in the project? 5 MS. GASTWIRTH: Objection. I don't 6 think that's what the document says. I 7 think you were correctly stating management 8 responsibility or financial interest. 9 Q. Well, what did you do, Mr. Kaufman, 10 you and your entities, to look into a 11 possibility of buying out Mr. Melius? What 12 sort of due diligence did you do prior to 13 making the decision to buy him out? 14 MS. GASTWIRTH: Objection. 15 Go ahead. 16 A. We reviewed market studies of the 17 viability of a casino in that market and 18 whether or not we thought it would be a 19 successful project. 20 Q. Did there come a time when you and 21 Mr. Melius negotiated a price and other terms 22 for the buy-out? 23 A. Yes. 24 Q. Do you recall as you sit here today 25 what the price of the buy-out was?</p>	<p style="text-align: right;">Page 39</p> <p>1 Kaufman 2 A. No. 3 Q. Does 4.99 million sound about right? 4 A. Could be. I don't remember the 5 exact terms. 6 Q. I will represent to you that the 7 price was 4.99 million, but leaving that aside, 8 what went into the determination of the price? 9 A. I don't recall. 10 Q. Did you negotiate with Mr. Melius 11 over the buy-out price? 12 A. Yes. 13 Q. Did you also agree to buy out 14 Mr. Melius' partner at the time? 15 A. At what time? 16 Q. When you agreed to buy out 17 Mr. Melius' interest, Mr. Melius' interest was 18 through a company called Native American 19 Management Corp. or NAMC, is that right, if you 20 recall? 21 A. I don't recall. 22 MS. GASTWIRTH: Again, the "you," 23 are we separating out the "you"? We know 24 the acquisition was through entities. 25 Q. When I say "you," I mean your</p>
<p style="text-align: right;">Page 40</p> <p>1 Kaufman 2 entities. I believe your entity was Massena 3 Management Corp. that bought out Mr. Melius' 4 company, NAMC. Mr. Melius, though, had a 5 partner in the project; isn't that right? 6 A. I don't know if the correct term is 7 he had a partner. I don't recall the exact 8 business relationship that existed, whether 9 partner is the right terminology or not. 10 Q. But you had a separate entity, 11 Massena Management, LLC, that bought out 12 another entity, P.R.C.-St. Regis, Inc.? 13 A. That's correct. 14 Q. Who was involved in the discussions 15 other than yourself and Mr. Melius over the 16 buy-out price for NAMC? 17 A. Walter Horn. 18 Q. Anyone else that you can think of? 19 A. No. 20 Q. Now, during the course of the 21 discussions over the possible buy-out of NAMC 22 by your entity, Massena Management Corp., did 23 the subject come up as to which company or 24 companies would serve as the general contractor 25 and architect for the casino project?</p>	<p style="text-align: right;">Page 41</p> <p>1 Kaufman 2 MS. GASTWIRTH: Objection. 3 A. I don't recall. 4 Q. Do you know, Mr. Kaufman, as you sit 5 here today, how much of the \$4.99 million 6 buy-out price to buy out Mr. Melius' entity, 7 NAMC, has been paid? 8 A. I don't recall what the up-front 9 deposit was, but other than the up-front 10 deposit I don't think any payments were made. 11 Q. Why is that, if you know? 12 A. Because the enterprise is not a 13 successful enterprise. It doesn't have the 14 cash flow to make the payments. 15 Q. Did you understand the buy-out 16 agreement to mean that Mr. Melius was only to 17 be paid if the entity were successful? 18 MS. GASTWIRTH: Objection. 19 A. No. 20 Q. What was your understanding of what 21 the buy-out agreement required in terms of 22 payments for the buy-out? 23 A. That the entity had an obligation to 24 make those payments. 25 Q. I'm sorry, I couldn't hear what you</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 Kaufman</p> <p>2 said.</p> <p>3 A. That the entity had an obligation to</p> <p>4 make those payments.</p> <p>5 Q. Whether or not the entity were</p> <p>6 successful?</p> <p>7 A. If the entity had the capability to</p> <p>8 make the payments, it would. If it didn't have</p> <p>9 the money, it couldn't. It's a question of</p> <p>10 whether it had capability or not.</p> <p>11 Q. So what you are saying is that as a</p> <p>12 practical matter, regardless of what the</p> <p>13 buy-out provided in terms of the scheduled</p> <p>14 payments, if the entity didn't have the money,</p> <p>15 it wasn't going to make the payments; is that</p> <p>16 right?</p> <p>17 MS. GASTWIRTH: Objection. I think</p> <p>18 you are recharacterizing his testimony.</p> <p>19 MR. SEFF: I am not. I am just</p> <p>20 trying to understand his position. We</p> <p>21 don't have enough time for me to</p> <p>22 recharacterize his testimony. I just want</p> <p>23 to understand his position on what was</p> <p>24 required under the buy-out.</p> <p>25 A. If the company doesn't have the cash</p>	<p style="text-align: right;">Page 43</p> <p>1 Kaufman</p> <p>2 to make a payment, it can't make a payment if</p> <p>3 it doesn't have the cash. It's not that</p> <p>4 complicated a concept. Either the money exists</p> <p>5 or it doesn't exist to make a payment. If</p> <p>6 there is no money in the entity to make a</p> <p>7 payment, it can't make a payment.</p> <p>8 MS. GASTWIRTH: I think I sent you,</p> <p>9 Dan, yesterday or the day before a lawsuit</p> <p>10 by NAMC against President for the balance</p> <p>11 of that acquisition agreement.</p> <p>12 MR. SEFF: Okay. I have been in</p> <p>13 transit since then. I didn't see it.</p> <p>14 MS. GASTWIRTH: And I know Walter</p> <p>15 had testified about that. It was a</p> <p>16 follow-up to Walter's testimony.</p> <p>17 Q. Mr. Melius' entity sued your entity</p> <p>18 for the unpaid balance; is that right?</p> <p>19 A. I believe so.</p> <p>20 Q. What's your position in that case?</p> <p>21 What's your defense to that suit?</p> <p>22 A. I don't know.</p> <p>23 Q. Did you hire lawyers to oppose that</p> <p>24 case?</p> <p>25 A. I'm sure we did. I am not familiar</p>
<p style="text-align: right;">Page 44</p> <p>1 Kaufman</p> <p>2 with the details.</p> <p>3 Q. Your buy-out agreement was</p> <p>4 ultimately approved by the NIGC; is that right?</p> <p>5 A. Unfortunately.</p> <p>6 Q. Do you recall roughly when that was?</p> <p>7 A. I don't recall a date.</p> <p>8 Q. Beginning of January '98, does that</p> <p>9 sound about right?</p> <p>10 A. If you have a document, it may</p> <p>11 refresh my recollection so I could be more</p> <p>12 accurate. I really don't recall the date.</p> <p>13 Q. I don't think I have a document here</p> <p>14 to help you, but I do recall that Mr. Horn</p> <p>15 testified that it was January of '98. That's</p> <p>16 the best I can do for you on that right now.</p> <p>17 In any event, there came a time when</p> <p>18 the NIGC approved the buy-out; isn't that</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. And I think you indicated you made</p> <p>22 the initial payment or deposit under that</p> <p>23 agreement and then, as you recall, no</p> <p>24 subsequent payments were made.</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 45</p> <p>1 Kaufman</p> <p>2 Q. Now, after the buy-out was approved,</p> <p>3 what was the next thing that had to happen?</p> <p>4 A. In what sense?</p> <p>5 Q. Was there a need to select a general</p> <p>6 contractor to construct the casino?</p> <p>7 A. At what point in time?</p> <p>8 Q. After the buy-out was approved and</p> <p>9 the management agreement was approved.</p> <p>10 A. I don't recall the --</p> <p>11 Q. The chronology?</p> <p>12 A. I don't recall the chronology of all</p> <p>13 the events.</p> <p>14 Q. Did there come a time when President</p> <p>15 R.C.-St. Regis Management Company, the new</p> <p>16 NIGC-approved manager for the casino project</p> <p>17 needed to and did select a general contractor</p> <p>18 to build the casino?</p> <p>19 A. Yes.</p> <p>20 Q. Were you involved in the decision of</p> <p>21 which company to select as general contractor?</p> <p>22 A. Yes.</p> <p>23 Q. Did the management agreement also</p> <p>24 require that an architect be selected, if you</p> <p>25 recall?</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 Kaufman</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall discussions over which</p> <p>4 company would serve as the architect?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know which company was</p> <p>7 ultimately selected as the general contractor?</p> <p>8 A. Yes.</p> <p>9 Q. Which company was that?</p> <p>10 A. Anderson Blake.</p> <p>11 Q. Anderson Blake Construction Corp.?</p> <p>12 A. I don't know the whole legal name.</p> <p>13 We just refer to it as Anderson Blake.</p> <p>14 Q. So I will attempt to refer to it</p> <p>15 that same way from here on.</p> <p>16 Do you know the name of the company</p> <p>17 that was selected to be the architect?</p> <p>18 A. I don't recall.</p> <p>19 Q. Does the name Archon Design Limited</p> <p>20 sound familiar to you?</p> <p>21 A. I don't recall.</p> <p>22 Q. What went into the decision-making</p> <p>23 process to select Anderson Blake as the general</p> <p>24 contractor?</p> <p>25 A. We had a significant number of</p>	<p style="text-align: right;">Page 47</p> <p>1 Kaufman</p> <p>2 issues. We had a limited amount of time to get</p> <p>3 started in order to meet the NIGC's</p> <p>4 requirements. We had the existing plans and</p> <p>5 specs and foundations that were put in place by</p> <p>6 the, you know, prior entities that were working</p> <p>7 on the project, which we received the credit</p> <p>8 for in our development cost. We had ordered</p> <p>9 steel. I believe there was ordered steel that</p> <p>10 had to be taken into consideration. So based</p> <p>11 on the time frame, based on the history and</p> <p>12 based on the prior engineerings, it was agreed</p> <p>13 by my entities as well as the Tribal entities</p> <p>14 that it would be in our best interests to</p> <p>15 continue with the prior companies that did all</p> <p>16 the work and we entered into a fixed price</p> <p>17 contract with the general contractor.</p> <p>18 Q. When you say "the general</p> <p>19 contractor," you are referring to Anderson</p> <p>20 Blake; right?</p> <p>21 A. Correct.</p> <p>22 Q. Had you ever worked with Anderson</p> <p>23 Blake before on any other projects?</p> <p>24 A. It's possible. I don't recall.</p> <p>25 Q. Had you ever been involved in any</p>
<p style="text-align: right;">Page 48</p> <p>1 Kaufman</p> <p>2 other construction projects prior to the casino</p> <p>3 project?</p> <p>4 A. I don't recall.</p> <p>5 MS. GASTWIRTH: I'm sorry, is that</p> <p>6 any construction projects?</p> <p>7 MR. SEFF: Yes.</p> <p>8 MS. GASTWIRTH: Has he ever been</p> <p>9 involved in construction projects before?</p> <p>10 Q. Your primary business is lending</p> <p>11 money; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Had you ever lent money on any</p> <p>14 projects prior to this casino project where</p> <p>15 Anderson Blake was the general contractor or a</p> <p>16 contractor?</p> <p>17 A. I don't recall.</p> <p>18 Q. Had you heard the name Anderson</p> <p>19 Blake before you got involved in the casino</p> <p>20 project?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you check any references on</p> <p>23 Anderson Blake before you selected them?</p> <p>24 A. I don't recall.</p> <p>25 Q. Did you check to see if there were</p>	<p style="text-align: right;">Page 49</p> <p>1 Kaufman</p> <p>2 any judgements against Anderson Blake?</p> <p>3 A. I don't recall.</p> <p>4 Q. Any bankruptcies?</p> <p>5 A. I don't recall.</p> <p>6 Q. Any lawsuits?</p> <p>7 A. I don't recall.</p> <p>8 Q. Did you check to see if there were</p> <p>9 any liens against Anderson Blake?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you check their corporate</p> <p>12 filings at all?</p> <p>13 A. I don't recall.</p> <p>14 Q. Any bank references that you</p> <p>15 checked?</p> <p>16 A. I don't recall.</p> <p>17 Q. Did you check their financial</p> <p>18 liquidity and soundness?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you investigate any previous</p> <p>21 jobs that the company Anderson Blake had worked</p> <p>22 on?</p> <p>23 A. I don't recall.</p> <p>24 Q. Did you check to see if any of the</p> <p>25 principals in Anderson Blake had a criminal</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 Kaufman</p> <p>2 record?</p> <p>3 A. I don't recall.</p> <p>4 Q. Now, did you know who the Anderson</p> <p>5 Blake principal was at the time that you</p> <p>6 selected Anderson Blake to be the general</p> <p>7 contractor for the casino?</p> <p>8 A. Can you repeat the question.</p> <p>9 Q. Did you know who the owner was of</p> <p>10 Anderson Blake at the time that you selected</p> <p>11 Anderson Blake to be the general contractor for</p> <p>12 the casino?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you recall where Anderson Blake's</p> <p>15 offices were in or around 1998 when they were</p> <p>16 chosen to be the general contractor?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall who the officers of</p> <p>19 the company were?</p> <p>20 A. I don't recall.</p> <p>21 Q. Directors?</p> <p>22 A. I don't recall.</p> <p>23 Q. Shareholders?</p> <p>24 A. I don't recall.</p> <p>25 Q. Now, I mentioned the name a couple</p>	<p style="text-align: right;">Page 51</p> <p>1 Kaufman</p> <p>2 of minutes to you Archon Design and I believe</p> <p>3 you said the name sounded familiar but you</p> <p>4 weren't sure; is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. I will represent to you for the sake</p> <p>7 of this discussion that Archon Design, we will</p> <p>8 abbreviate it as Archon, that's A-R-C-H-O-N,</p> <p>9 was chosen by President to be the architect for</p> <p>10 the casino.</p> <p>11 Do you recall any discussions prior</p> <p>12 to and leading up to the selection of Archon</p> <p>13 regarding who should serve as the architect?</p> <p>14 A. I don't remember.</p> <p>15 MS. GASTWIRTH: If you want to show</p> <p>16 him some documents, maybe that will help</p> <p>17 refresh his recollection. He is testifying</p> <p>18 as he sits here today years later.</p> <p>19 Q. So would it be fair to say,</p> <p>20 Mr. Kaufman, that since you don't recall</p> <p>21 selecting Archon Design, that you wouldn't</p> <p>22 recall investigating those same categories of</p> <p>23 issues that I just listed regarding Anderson</p> <p>24 Blake?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 52</p> <p>1 Kaufman</p> <p>2 Q. No need for me to list those</p> <p>3 individually here for Archon?</p> <p>4 A. Not for me.</p> <p>5 Q. The answer will be you don't recall?</p> <p>6 I mean, I will list them if you think it might</p> <p>7 be helpful.</p> <p>8 A. No. I answered your question.</p> <p>9 Q. Okay, thank you.</p> <p>10 Did you have any understanding,</p> <p>11 Mr. Kaufman -- and I am representing to you</p> <p>12 that Archon was selected as the architect, and</p> <p>13 I am sure your lawyer would chime in if she</p> <p>14 thought I was misrepresenting the facts, but</p> <p>15 they were selected as the architect.</p> <p>16 Did you have any understanding as to</p> <p>17 whether there was any connection between</p> <p>18 Anderson Blake and Archon at the time that</p> <p>19 those companies were selected?</p> <p>20 MS. GASTWIRTH: Objection. You</p> <p>21 know, I am not going to chime in. I am</p> <p>22 going to wait for whatever it is --</p> <p>23 MR. SEFF: Okay, maybe she won't</p> <p>24 chime in.</p> <p>25 Q. I am representing to you that</p>	<p style="text-align: right;">Page 53</p> <p>1 Kaufman</p> <p>2 Archon --</p> <p>3 MS. GASTWIRTH: Why don't you show</p> <p>4 him the document. It will help him. He is</p> <p>5 sitting here with a memory quiz years</p> <p>6 later.</p> <p>7 MR. SEFF: There is really not much</p> <p>8 to show him.</p> <p>9 MS. GASTWIRTH: There is the January</p> <p>10 14, 1998, letter agreement.</p> <p>11 MR. SEFF: I can show you that.</p> <p>12 MS. GASTWIRTH: Maybe that will help</p> <p>13 refresh his recollection as to the</p> <p>14 selection of the general contractor and</p> <p>15 architect. And that's the one that's a</p> <p>16 little cut off, but not in a relevant part.</p> <p>17 MR. SEFF: Right.</p> <p>18 Q. All right, Mr. Kaufman, I am going</p> <p>19 to show you a document that's previously been</p> <p>20 marked as Plaintiff's Exhibit 65. It's a</p> <p>21 January 14, 1998, letter from you to Edward</p> <p>22 Smoke on Massena Management, LLC letterhead. I</p> <p>23 ask you to look at that. It is not a great</p> <p>24 copy, but it is legible. Take a look at it and</p> <p>25 tell me if you recall seeing that before.</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 Kaufman 2 (Document review.) 3 A. Okay. What's the question? 4 Q. The question is have you ever seen 5 what's been marked as Exhibit 65 before? 6 A. It certainly refreshes my 7 recollection of the events leading up to the 8 selection of the architect and the general 9 contractor. 10 Q. Okay. Tell me what you recall now 11 that you have had a chance to review 65. 12 A. Basically we had a limited amount of 13 time in order to begin construction and 14 complete it. We had existing plans which we 15 submitted with the management agreement which 16 were developed by, I believe, this architect 17 and with this general contractor doing the 18 previous work. We worked with the Tribe to 19 figure out what was the best fit to proceed in 20 order to meet these timetables, and with the 21 Tribe's approval we agreed to select Anderson 22 Blake and Archon, who was previously working on 23 this project, and we created a fixed price 24 contract in terms of the total dollars it would 25 take to build this casino and we were seeking</p>	<p style="text-align: right;">Page 55</p> <p>1 Kaufman 2 authorization from the Tribe in order to 3 proceed with Anderson Blake as the contractor 4 and Archon as the architect and do a fixed 5 price contract in order to meet the 6 requirements as imposed by the NIGC. 7 Q. Thank you, Mr. Kaufman. 8 Does reviewing Exhibit 65 refresh 9 your recollection at all as to who the owner 10 was of Anderson Blake? 11 A. No. 12 Q. Does reviewing Exhibit 65 help 13 refresh your recollection at all as to who the 14 owner or owners were of Archon Design? 15 A. No. 16 Q. Did you have any understanding, 17 Mr. Kaufman, of what the management 18 agreement -- and when I say "the management 19 agreement," which I can show you if you want, I 20 am referring to the Fourth Amended and Restated 21 Management Agreement between the Tribe, that is 22 the St. Regis Mohawk Tribe, and President R.C. 23 dated November 7, 1997. 24 Did you have any understanding, 25 Mr. Kaufman, as to what the management</p>
<p style="text-align: right;">Page 56</p> <p>1 Kaufman 2 agreement required in terms of a general 3 contractor and an architect? 4 A. I don't recall. I would have to 5 look at the agreement. 6 Q. Was that something that you would 7 have reviewed and been involved in, or was that 8 something that was the responsibility of 9 Mr. Horn or somebody else? 10 A. I might have received advice from 11 Mr. Horn, but clearly, you know, he helps me 12 interpret the management agreements and make 13 sure that we are in compliance with the 14 different agreements. 15 Q. Did you write the letter that's been 16 marked as Exhibit 65? It's signed by you as 17 president of President R.C. Did you write that 18 letter or was that letter written for you? 19 A. I don't recall. 20 Q. Is this the type of thing that you 21 would write or is it something that somebody 22 else would write for you? 23 A. I don't know. 24 Q. But you clearly reviewed it before 25 you signed it; right?</p>	<p style="text-align: right;">Page 57</p> <p>1 Kaufman 2 A. I don't recall. 3 Q. You don't recall if you read what's 4 been marked as Exhibit 65 before you signed it? 5 A. It was ten years ago. I can't -- 6 eight years ago, whatever it is. I don't 7 remember. 8 Q. Six years ago. 9 A. Six years ago. 10 Q. Do you typically review things 11 before you sign them? Let me get more general. 12 A. Depending on the length of the 13 document and what it's for, but I certainly try 14 to. 15 Q. Is it your testimony that you had no 16 understanding on January 14, 1998, when you 17 signed Exhibit 65, you had no understanding as 18 to who owned Archon? 19 MS. GASTWIRTH: Objection. Are you 20 trying to summarize -- 21 MR. SEFF: That's a question. 22 That's not a summary. 23 Q. I said is it your testimony that on 24 January 14, 1998, you had no understanding as 25 to who owned Archon?</p>

<p style="text-align: right;">Page 58</p> <p>1 Kaufman</p> <p>2 A. I don't recall.</p> <p>3 Q. Is it your testimony that you had no</p> <p>4 understanding as to who owned Anderson Blake on</p> <p>5 January 14, 1998?</p> <p>6 A. I don't recall.</p> <p>7 Q. Were you involved in the negotiation</p> <p>8 of the price for the construction contract with</p> <p>9 the general contractor, Anderson Blake?</p> <p>10 A. I don't recall.</p> <p>11 Q. Exhibit 65 states that the amount of</p> <p>12 the construction contract is, rounding, 14.2</p> <p>13 million?</p> <p>14 MS. GASTWIRTH: 14.1 or --</p> <p>15 MR. SEFF: Well, it's 14.18 million.</p> <p>16 MS. GASTWIRTH: Okay.</p> <p>17 Q. Anything about that number that</p> <p>18 refreshes your recollection as to whether you</p> <p>19 were involved in the negotiation of it?</p> <p>20 A. I don't recall.</p> <p>21 Q. Now, Mr. Horn signed the</p> <p>22 construction contract on behalf of President.</p> <p>23 Do you recall whether you reviewed</p> <p>24 the construction contract before it was</p> <p>25 executed by Mr. Horn?</p>	<p style="text-align: right;">Page 59</p> <p>1 Kaufman</p> <p>2 A. I don't recall.</p> <p>3 Q. If I were to show you the</p> <p>4 construction contract, would that possibly help</p> <p>5 refresh your recollection?</p> <p>6 A. I don't know.</p> <p>7 Q. All right, Mr. Kaufman, I am going</p> <p>8 to show you two documents that have been</p> <p>9 previously marked as deposition Exhibits 56 and</p> <p>10 63. Exhibit 56 is an AIA Form A101 and Exhibit</p> <p>11 63 is an AIA Form A201, and together they make</p> <p>12 up what we are referring to here together as</p> <p>13 the construction contract. Why don't you take</p> <p>14 a look at those two exhibits.</p> <p>15 MS. GASTWIRTH: I can put my</p> <p>16 objection on the record in the meantime. I</p> <p>17 don't know that what's been marked as</p> <p>18 Exhibit 63 was ever produced by any party</p> <p>19 in this action and I believe that last time</p> <p>20 you represented you got it off the</p> <p>21 Internet. It's not a document that's</p> <p>22 within anyone's files. I know it's</p> <p>23 referenced in the prior Exhibit 56, but I</p> <p>24 don't think that document existed in the</p> <p>25 parties' files.</p>
<p style="text-align: right;">Page 60</p> <p>1 Kaufman</p> <p>2 MR. SEFF: Okay, your objection is</p> <p>3 noted.</p> <p>4 Q. Mr. Kaufman, I guess the first</p> <p>5 question is have you seen what's been marked as</p> <p>6 Exhibit 56 before?</p> <p>7 A. I don't remember.</p> <p>8 Q. Same answer as to 63?</p> <p>9 A. Yes.</p> <p>10 Q. Anything about looking at those two</p> <p>11 documents that refreshes your recollection as</p> <p>12 to whether you were involved in the negotiation</p> <p>13 of the price for the construction contract or</p> <p>14 any of the other terms?</p> <p>15 A. No.</p> <p>16 MS. GASTWIRTH: Can we take a short</p> <p>17 break.</p> <p>18 MR. SEFF: Yes.</p> <p>19 (Recess taken from 9:25 to</p> <p>20 9:43.)</p> <p>21 (Record read.)</p> <p>22 Q. Mr. Kaufman, did President select</p> <p>23 Archon as the architect under the belief that</p> <p>24 it was independent of Anderson Blake?</p> <p>25 A. What do you mean by "independent"?</p>	<p style="text-align: right;">Page 61</p> <p>1 Kaufman</p> <p>2 Q. Separate ownership.</p> <p>3 A. I don't recall.</p> <p>4 Q. What, if anything, Mr. Kaufman, did</p> <p>5 President do to ensure that Archon and Anderson</p> <p>6 Blake were independent of each other?</p> <p>7 A. I don't recall.</p> <p>8 Q. Did President require --</p> <p>9 MS. GASTWIRTH: I'm sorry.</p> <p>10 (Discussion off the record.)</p> <p>11 Q. Did President require an independent</p> <p>12 architect certification on Anderson Blake's</p> <p>13 applications for payments before it released</p> <p>14 payments to Anderson Blake?</p> <p>15 A. I don't recall.</p> <p>16 Q. Who at President authorized periodic</p> <p>17 payments to Anderson Blake? Would that be you?</p> <p>18 MS. GASTWIRTH: Objection.</p> <p>19 MR. SEFF: If you understand the</p> <p>20 question, you can answer.</p> <p>21 A. I don't remember the process that we</p> <p>22 used.</p> <p>23 Q. Now, after the buy-out, which for</p> <p>24 the sake of this discussion we are assuming was</p> <p>25 approved by the NIGC in January of 1998, what,</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 Kaufman 2 if any, role did Mr. Melius play in connection 3 with the casino? 4 MS. GASTWIRTH: Objection. 5 Q. Construction and development. 6 A. Which buy-out are you referring to? 7 Q. I am referring to Massena Management 8 Corp.'s buy-out of NAMC. 9 A. And what was your question? 10 Q. After that buy-out was approved by 11 NAMC, which I am representing was in or around 12 January of 1998, what role or roles, if any, 13 did Mr. Gary Melius play in the casino project? 14 MS. GASTWIRTH: Objection to "casino 15 project." 16 Q. And by "casino project," that's 17 project with a lower case P, I am including 18 anything and everything that had to do with 19 getting the casino up and running. 20 MS. GASTWIRTH: That's what I am 21 objecting to. 22 Go ahead and answer it, if you can. 23 MR. SEFF: Just on the record here, 24 what's objectionable about that? 25 MS. GASTWIRTH: Because it involves</p>	<p style="text-align: right;">Page 63</p> <p>1 Kaufman 2 a multitude of things as you have defined 3 it in various interrogatories and document 4 requests. 5 MR. SEFF: I am trying to be -- 6 MS. GASTWIRTH: Financing, 7 development, et cetera. 8 MR. SEFF: I am trying to be as 9 broad as possible here. I am trying to be 10 completely -- 11 MS. GASTWIRTH: Well, then it is 12 compound and confusing, but if the witness 13 can answer it, he can answer it. 14 MR. SEFF: If it's confusing, I can 15 try to rephrase it, but I am trying to be, 16 Mr. Kaufman, so you understand my question, 17 as broad as possible here. 18 Q. What role or roles or functions did 19 Mr. Melius play in any aspect of the casino 20 project? 21 A. I can't answer such a general and 22 broad question. I'd appreciate if you could be 23 more specific. 24 Q. All right. Did he have any 25 management role in the casino?</p>
<p style="text-align: right;">Page 64</p> <p>1 Kaufman 2 A. No. 3 Q. Did he have any financial role in 4 the casino? 5 A. No. 6 Q. Did he have any role in hiring 7 personnel? 8 A. You have to be more specific with 9 that question. 10 THE WITNESS: Excuse me just a 11 second. 12 MR. SEFF: Note on the record that 13 Mr. Kaufman is receiving a call and note 14 the time and take us off the record. 15 (Recess was taken from 9:48 to 16 9:49.) 17 Q. Mr. Kaufman, rather than me 18 attempting to list specific functions that 19 Mr. Melius may have been involved in and asking 20 you if he had a role, I can do that, but why 21 don't you first tell me everything you recall 22 that he did do in connection with the casino 23 after the buy-out, and then if there is more 24 precise breaking down that needs to be done, we 25 will try to do that, but maybe we could save</p>	<p style="text-align: right;">Page 65</p> <p>1 Kaufman 2 time if you tell me everything that you 3 remember now. 4 A. It's too general and too broad. I 5 can't answer such a broad question. It was 6 over a several-year period. If you have a 7 specific question, I will try and answer it. 8 Q. Let's try to break the time frame 9 down. In between January of '98, which is when 10 the buy-out was approved, and April of '99, 11 which is when the casino opened for business, 12 what function or roles did Mr. Melius play in 13 the project? 14 MS. GASTWIRTH: Objection. 15 Go ahead. 16 A. I can't recall. 17 Q. You don't recall? 18 A. It's a very long period of time and 19 a very complicated process, so you would have 20 to be more specific in your question. 21 Q. I don't have anything in particular 22 in mind when I am asking the question. I am 23 testing your memory here. I am asking you to 24 tell me what you remember. 25 Do you remember meeting with him in</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Kaufman 2 connection with the casino between January of 3 '98 and April of '99? 4 A. I'm sure I did meet with him. 5 Q. Okay, and when you met with him, 6 what did you discuss with him? 7 A. I don't remember. 8 Q. Do you remember anything about your 9 meetings with Mr. Melius between January of '98 10 and April of '99? 11 A. Not in a general sense. 12 Q. In any sense. 13 A. Ask me a specific question and I 14 will try and answer it. I just can't -- you 15 know, this is over a period of a couple of 16 years, a very involved relationship. I just 17 can't draw in general recollection senses to a 18 general question that's not specific, so if you 19 have a specific question, I will answer it. I 20 can't answer a general question. 21 Q. Let's try this one. Between January 22 '98 and April '99, did you ever discuss the 23 financing of the casino with Mr. Melius? 24 A. I don't recall. 25 Q. Between those dates, did you discuss</p>	<p style="text-align: right;">Page 67</p> <p>1 Kaufman 2 personnel issues with Mr. Melius? 3 A. I don't recall. 4 Q. Between those dates, did you discuss 5 insurance issues with Mr. Melius? 6 A. I don't recall. 7 Q. Between those dates, did you discuss 8 liquor license issues with Mr. Melius? 9 A. I don't recall. 10 Q. I am trying to provide specific 11 categories in response to your concerns about 12 the broadness of my question. So far in each 13 instance you don't have any additional 14 recollection. 15 What specific categories of 16 information do you recall discussing with 17 Mr. Melius? 18 MS. GASTWIRTH: I think that's been 19 asked and answered. 20 MR. SEFF: Well, I am trying to help 21 the witness recall. 22 MS. GASTWIRTH: I know, but he is 23 doing the best he can. You have a list, so 24 keep going. 25 Q. Well, if we are going to do it that</p>
<p style="text-align: right;">Page 68</p> <p>1 Kaufman 2 way, I am going to broaden the dates, 3 Mr. Kaufman -- 4 MS. GASTWIRTH: Is that going to 5 help you? 6 Q. I am going to broaden the dates and 7 ask specific questions. 8 MS. GASTWIRTH: Why don't you show 9 him particular documents. 10 MR. SEFF: I tell you what, I will 11 do it the way I want and then you can do 12 what you want to do when it's your turn. 13 MS. GASTWIRTH: All right. That's 14 okay. 15 Q. I am going to broaden the dates from 16 January of '98 to April of 2000. During that 17 time period, was Mr. Melius involved in the 18 effort to obtain financing for the casino? 19 MS. GASTWIRTH: Objection to the 20 form, "involved." We had this objection 21 last time, but go ahead and answer. 22 MR. SEFF: If you understand the 23 question, you can answer. 24 MS. GASTWIRTH: Note my continuous 25 objection so I don't interrupt the</p>	<p style="text-align: right;">Page 69</p> <p>1 Kaufman 2 questions each time. 3 MR. SEFF: Thank you. 4 Q. Just to be precise, "involved," I am 5 not assigning any secret definition to it. 6 It's the dictionary definition, meaning having 7 anything to do with. 8 Between January '98 and April 2000, 9 was Mr. Melius involved in any efforts to 10 obtain financing for the casino? 11 A. I don't recall. 12 Q. During that time period, was 13 Mr. Melius involved in the hiring of a security 14 consultant for the casino? 15 A. I don't recall. 16 Q. During that time period, was 17 Mr. Melius involved in the drafting of a pledge 18 agreement for the Miller Schroeder loans? 19 A. I don't recall. 20 Q. During that time period, was 21 Mr. Melius involved in the process of selecting 22 the gaming machines, i.e., the video lottery 23 terminals to install in the casino? 24 A. I don't recall. 25 Q. During that time period, was</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 Kaufman 2 Mr. Melius involved in the effort to get the 3 NIGC to increase the development expense cap 4 from 20 million to approximately 28 million? 5 A. I don't recall. 6 MR. SEFF: Off the record. 7 (Recess was taken from 9:54 to 8 9:56.) 9 Q. Mr. Kaufman, during the time period 10 we have been discussing, which I have defined 11 as January 1998 to April 2000, was Mr. Melius 12 involved in the effort to obtain liquor 13 licenses for the casino? 14 A. What do you mean by that? 15 Q. Did he have any involvement at all, 16 did he play any role whatsoever in the effort 17 to obtain liquor licenses? 18 A. I do recall that he did give us some 19 introductions. I don't remember the time 20 frame, but I do remember him introducing us to 21 some people that may have helped facilitate us 22 moving forward. 23 Q. Was that the extent of his 24 involvement, making an introduction? 25 A. I believe so.</p>	<p style="text-align: right;">Page 71</p> <p>1 Kaufman 2 Q. During the time period that I have 3 defined, did Mr. Melius have any involvement in 4 the casino marketing? 5 A. I don't recall. 6 Q. During the time period we have been 7 discussing, was Mr. Melius involved in the 8 effort to set up a plane proposal for the 9 casino, and by "plane" I am talking about 10 airplanes? 11 A. I don't recall. 12 Q. During the time period we have been 13 discussing, was Mr. Melius involved in the 14 effort to obtain Department of Transportation 15 approval for casino road signs and billboards? 16 A. I don't recall. 17 Q. This is related to the liquor 18 question I asked you a moment ago. During the 19 time period we have been discussing, was 20 Mr. Melius involved in the effort to obtain an 21 amendment to the casino liquor licenses to 22 allow waitress service of beer and wine at the 23 gaming tables? 24 A. I don't recall. 25 Q. Was Mr. Melius involved in casino</p>
<p style="text-align: right;">Page 72</p> <p>1 Kaufman 2 marketing and, in particular, Canadian media 3 buying? 4 A. I don't recall. 5 Q. Now, in June of '99 did Mr. Melius 6 attend a meeting with you, Mr. Natalone and 7 Mr. Horn at which state police, state Racing 8 and Wagering Board and Tribal Gaming Commission 9 issues were discussed? 10 MS. GASTWIRTH: Can you read that 11 back one more time. 12 Q. In June of '99 did Mr. Melius attend 13 a meeting with you, Mr. Horn and Mr. Natalone 14 at which state police, state Racing and 15 Wagering Board and Tribal Gaming Commission 16 issues were discussed? 17 MS. GASTWIRTH: Objection. 18 A. I don't recall. 19 Q. Do you recall a June '99 meeting 20 attended by yourself, Mr. Horn, Mr. Natalone 21 and Mr. Melius at which casino security issues 22 were discussed? 23 A. I don't recall. 24 Q. Do you recall a June '99 meeting 25 with those participants at which Canadian</p>	<p style="text-align: right;">Page 73</p> <p>1 Kaufman 2 casino attendance issues were discussed? 3 A. I don't recall. 4 Q. Do you recall a June '99 meeting 5 attended by those participants at which state 6 approval of video poker was discussed? 7 A. I don't recall. 8 Q. Do you recall a June '99 meeting 9 attended by those participants, which is 10 yourself, Mr. Melius, Mr. Horn and 11 Mr. Natalone, at which the addition of keno and 12 lightning bingo was discussed? 13 A. I don't recall. 14 Q. Do you recall a June '99 meeting 15 attended by those participants at which casino 16 attendants and bussing goals were discussed? 17 A. I don't recall. 18 Q. Do you recall a June '99 meeting, 19 Mr. Kaufman, attended by yourself, Mr. Horn, 20 Mr. Natalone and Mr. Melius? 21 MS. GASTWIRTH: Objection. 22 Q. Separate and apart from the subject 23 matter that was discussed at the meeting, do 24 you recall a meeting with those people? 25 A. Do I recall being in a room with all</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 Kaufman</p> <p>2 those people at the same time?</p> <p>3 Q. In June of 1999.</p> <p>4 A. I don't recall.</p> <p>5 Q. Do you ever recall being in a room</p> <p>6 with Mr. Horn, Mr. Natalone, yourself and</p> <p>7 Mr. Melius?</p> <p>8 A. It's possible.</p> <p>9 Q. Between January of '98 and April of</p> <p>10 2000, it's possible?</p> <p>11 A. It's possible.</p> <p>12 Q. Do you recall a specific meeting at</p> <p>13 any time during that window of time with those</p> <p>14 people?</p> <p>15 MS. GASTWIRTH: Asked and answered.</p> <p>16 A. I don't recall.</p> <p>17 Q. I have been asking about June '99.</p> <p>18 I am broadening it now.</p> <p>19 MR. SEFF: To what period?</p> <p>20 Q. January '98 to April 2000.</p> <p>21 A. I don't recall.</p> <p>22 Q. I take it then from that answer that</p> <p>23 you don't recall discussing any specific topics</p> <p>24 with that group of people; is that right?</p> <p>25 MS. GASTWIRTH: For that same time</p>	<p style="text-align: right;">Page 75</p> <p>1 Kaufman</p> <p>2 period?</p> <p>3 A. That's correct.</p> <p>4 Q. That time period, January '98 to</p> <p>5 April 2000, those four people; you, Mr. Horn,</p> <p>6 Mr. Natalone, Mr. Melius. You don't recall</p> <p>7 discussing any particular topics with those</p> <p>8 four people during that time?</p> <p>9 A. In the room at the same time, no.</p> <p>10 Q. Or, you know, some combination of</p> <p>11 being in a room and on a phone.</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you recall Mr. Melius being</p> <p>14 involved in marketing the casino's 4th of July</p> <p>15 weekend activities, that is 4th of July weekend</p> <p>16 1999?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you recall if in or around June</p> <p>19 of '99 Mr. Melius was involved in the hiring of</p> <p>20 a casino consultant to advise on the casino's</p> <p>21 operational, accounting and marketing structure</p> <p>22 and strategy?</p> <p>23 A. I missed the beginning of that</p> <p>24 question.</p> <p>25 Q. In June of '99, in or around June of</p>
<p style="text-align: right;">Page 76</p> <p>1 Kaufman</p> <p>2 '99, do you recall if Mr. Melius was involved</p> <p>3 in the hiring of a consultant to advise on the</p> <p>4 casino's operational, accounting and marketing</p> <p>5 structure and strategy?</p> <p>6 A. I don't recall.</p> <p>7 Q. Do you recall if Mr. Melius was</p> <p>8 provided with copies of monthly casino</p> <p>9 financial reports during the period of April</p> <p>10 '99 to April 2000?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did you ever direct anyone at either</p> <p>13 President or Arbor, any of the Arbor entities</p> <p>14 or either of the Massena entities to provide</p> <p>15 Mr. Melius with casino financial results?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you know Mr. William Thornton?</p> <p>18 A. Yes.</p> <p>19 Q. Who is Mr. Thornton and what was his</p> <p>20 role in the casino, if you know?</p> <p>21 MS. GASTWIRTH: Objection.</p> <p>22 Q. Who is Mr. Thornton?</p> <p>23 A. Who?</p> <p>24 Q. Yes.</p> <p>25 A. What do you mean by "who"?</p>	<p style="text-align: right;">Page 77</p> <p>1 Kaufman</p> <p>2 Q. What role did he play in the casino?</p> <p>3 A. He is a man.</p> <p>4 Q. I know that, but what role did he</p> <p>5 play in the casino?</p> <p>6 A. He was on site and he was a go-to</p> <p>7 guy. He was a guy on site responsible for</p> <p>8 basically building the project.</p> <p>9 Q. Who did he work for, if you know?</p> <p>10 A. Anderson Blake.</p> <p>11 Q. Did he have any other roles in the</p> <p>12 casino other than being the go-to guy for</p> <p>13 construction?</p> <p>14 MS. GASTWIRTH: Objection.</p> <p>15 Q. If you know.</p> <p>16 A. He was a construction guy.</p> <p>17 Q. Was he ever involved in casino</p> <p>18 personnel and staffing decisions?</p> <p>19 A. Only as it related to the building</p> <p>20 of the facility and construction.</p> <p>21 Q. What about housekeepers?</p> <p>22 A. Only as it related to the building</p> <p>23 of the facility and construction.</p> <p>24 Q. Do you know if Mr. Thornton played</p> <p>25 any role in decisions over how many</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 Kaufman 2 housekeepers to hire for the casino? 3 MS. GASTWIRTH: Objection. 4 A. It depends whether it had to do with 5 maintenance requirement, cleaning, waxing. 6 These are all interrelated issues. 7 Q. How about security officers? 8 A. It depends on, I guess, some layout 9 issues. I mean, some of these were all 10 interrelated based on the facility. 11 Q. How about valet attendants? 12 A. That's possible too. 13 Q. What possible role would 14 Mr. Thornton of Anderson Blake have in how many 15 valet attendants to hire? 16 MS. GASTWIRTH: If you know. 17 Q. If you know. 18 A. Just in terms of the logistics, the 19 locations where certain things were going to be 20 built, the roads, you know, the drop-offs, you 21 know, all as it relates to different technical 22 aspects of the facility, construction, design, 23 all things of that nature. There is a lot of 24 cross-over in some of these issues. 25 Q. Did you authorize Mr. Thornton to</p>	<p style="text-align: right;">Page 79</p> <p>1 Kaufman 2 play a role in any personnel and staffing 3 decisions? 4 A. He worked with the on-site people to 5 make sure that the facility met the 6 requirements of the plan. 7 Q. Thank you for that answer, but that 8 wasn't my question. My question is did you 9 ever authorize Mr. Thornton to play a role in 10 staffing decisions? 11 MS. GASTWIRTH: Objection. I think 12 he answered your question, but go ahead and 13 answer it. 14 MR. SEFF: I suppose it was a 15 partial answer. 16 Q. Did you ever have a conversation 17 with Mr. Thornton in which you authorized or 18 deputized him to play a role in staffing 19 decisions? 20 A. I didn't deputize anybody. I am not 21 a deputizer. 22 Q. Okay, or authorizer. 23 A. I think that I would very much 24 appreciate his input into our decision-making 25 process to allow us to make sure that the</p>
<p style="text-align: right;">Page 80</p> <p>1 Kaufman 2 facility met our needs. 3 Q. So you welcomed his input? 4 A. We welcome everybody's input. 5 Q. During the period of October of '99 6 to March of 2000, was Mr. Melius involved in 7 the attempted sale of President's interest in 8 the management agreement to outside entities? 9 A. I don't recall the period of time. 10 Q. Well, leaving the period of time 11 aside, was Mr. Melius ever involved in the 12 attempted sale of President's interest in the 13 casino management agreement to outside 14 entities? 15 MS. GASTWIRTH: Note my continuing 16 objection to "involved." It's been quite a 17 few pages. 18 Go ahead and answer it, if you can. 19 MR. SEFF: Again, she is objecting 20 to "involved," but by "involved" I am 21 attempting to be as broad as possible to 22 include any possible role. 23 MS. GASTWIRTH: So that if there was 24 a discussion, that would be involved, or if 25 there was a note, a memo --</p>	<p style="text-align: right;">Page 81</p> <p>1 Kaufman 2 MR. SEFF: I can't be more specific 3 until I hear what the answer is as to the 4 involvement. 5 A. I think Mr. Melius -- can I call him 6 Gary? 7 Q. You can call him Gary. 8 A. I think Gary made some introductions 9 of companies or people to us. 10 Q. Possible purchasers? 11 A. I guess purchasers, investors. I'm 12 not sure of the different capacities. 13 Q. Any other involvement by Gary, or I 14 will call him Mr. Melius, but feel free to call 15 him Gary if you like, anything else that 16 Mr. Melius did on the subject of attempting to 17 sell President's interest other than make 18 introductions? 19 A. I don't recall. 20 Q. Do you recall whether he negotiated 21 any possible investment or purchase terms with 22 outside investors? 23 A. I don't recall. 24 Q. Now, was Mr. Melius involved in any 25 way in the effort to sell President's interest</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 Kaufman 2 in the casino management contract to Park Place 3 Entertainment Corp.? 4 A. He made an introduction. 5 Q. Do you recall who he introduced you 6 to? 7 A. I don't know whether it was -- I 8 don't know whether he introduced us to Park 9 Place or it was Senator Damato introduced us to 10 Park Place. I forgot exactly how that came 11 about. 12 Q. Beyond making the introduction, did 13 Mr. Melius play any other role in the effort to 14 sell President's interest to Park Place? 15 A. I don't recall. 16 THE WITNESS: I need to take a 17 break. Excuse me. 18 (Recess was taken from 10:10 to 19 10:18.) 20 (Record read.) 21 Q. Mr. Kaufman, did you ever have any 22 discussions with Mr. Melius regarding the 23 construction of the casino between January of 24 '98 and April of 2000? 25 A. Yes.</p>	<p style="text-align: right;">Page 83</p> <p>1 Kaufman 2 Q. What do you recall about your 3 discussion or discussions with Mr. Melius 4 concerning the casino's construction? 5 MS. GASTWIRTH: During that period 6 of time? 7 MR. SEFF: Yes. 8 A. I guess there were numerous 9 discussions, but the ability to bring it in on 10 time, it was critical to get started, we had 11 discussions about the steel. You know, we had 12 meetings with Ed Smoke actually in my offices 13 with Gary regarding the ability to get the job 14 done. 15 Q. Anything else that you recall about 16 your discussions? 17 A. Those were the general parameters. 18 Q. Why would you be discussing the 19 subject of, as you say, bringing it in on time 20 with Mr. Melius? 21 His entity was bought out by your 22 entity in or around January of '98. As I 23 understand it, construction commenced sometime 24 that spring of '98 and the casino ultimately 25 opened in April of '99.</p>
<p style="text-align: right;">Page 84</p> <p>1 Kaufman 2 Why would you be discussing the 3 issue of bringing the construction in on time 4 with Mr. Melius, if you recall? 5 A. I think if you go back to my earlier 6 testimony, the issue of adopting the existing 7 plans, hiring Anderson Blake and operating in a 8 certain timetable, we decided along with the 9 Tribal gaming people, the Tribe or the elected 10 officials of the Tribe, to hire Anderson Blake 11 and to basically pick up and not miss a beat in 12 terms of all the previous work that was done, 13 and since Gary was involved with Anderson Blake 14 and had the most knowledge, there were 15 discussions that we all had together in terms 16 of being able to operate off of plans that were 17 a few years old and being able to go forward in 18 a seamless way. 19 Q. What was Gary's involvement with 20 Anderson Blake? 21 A. In what sense? 22 Q. I thought you had testified earlier 23 that you didn't recall whether he was involved 24 with Anderson Blake. You just said a second 25 ago that he was involved with Anderson Blake</p>	<p style="text-align: right;">Page 85</p> <p>1 Kaufman 2 and I am asking you what was his involvement? 3 MS. GASTWIRTH: Objection. I don't 4 think that was his testimony. 5 A. I think you should look at my 6 testimony if you say what my testimony is so 7 you don't -- 8 Q. I can't look at it yet, because I 9 don't have the transcript, but leaving that 10 issue aside, what was Gary's involvement with 11 Anderson Blake as far as you knew during the 12 period of January '98 to April 2000? 13 A. He was involved in the development 14 of the plans and the construction and the 15 ordering of steel and the design and the whole 16 process. This was years and years worth of 17 work. We got approved and we had to break 18 ground within 90 days. We basically had to 19 take years worth of work. The footings were 20 put in. You know, Gary and his enterprises 21 spent 4 to 5 million dollars already in 22 developing the footings for the casino and all 23 of this was done by entities that he was 24 involved with. They had done the plans. All 25 the plans that were submitted to the NIGC were</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 Kaufman</p> <p>2 stuff that we basically just adopted.</p> <p>3 MS. GASTWIRTH: I think your</p> <p>4 previous questions were very specific when</p> <p>5 you asked him -- I don't know if you asked</p> <p>6 him if he was president or a particular</p> <p>7 officer, and I think that's what the source</p> <p>8 of confusion is, of Anderson Blake.</p> <p>9 MR. SEFF: We will be able to review</p> <p>10 the record when the transcript is</p> <p>11 available.</p> <p>12 MS. GASTWIRTH: Just so you</p> <p>13 understand, that's --</p> <p>14 MR. SEFF: Well, it's in the book,</p> <p>15 whatever it is. We will review it when</p> <p>16 it's available.</p> <p>17 MS. GASTWIRTH: Well, you have got</p> <p>18 his testimony now.</p> <p>19 MR. SEFF: We got his testimony then</p> <p>20 and we got his testimony now.</p> <p>21 MS. GASTWIRTH: Well, I think you</p> <p>22 asked, if we go back in the record and we</p> <p>23 can actually take the time to go back --</p> <p>24 MR. SEFF: Let's not do that. We</p> <p>25 can look at it at a time later.</p>	<p style="text-align: right;">Page 87</p> <p>1 Kaufman</p> <p>2 A. I would appreciate when you</p> <p>3 characterize what I say, you either</p> <p>4 characterize it correctly or go back in the</p> <p>5 record, because you are confusing me and you</p> <p>6 are trying to put words about my testimony</p> <p>7 which are confusing.</p> <p>8 Q. That's not my intent.</p> <p>9 A. But that's what's happening and it's</p> <p>10 difficult for me to try and answer a question</p> <p>11 accurately if you are going to recharacterize</p> <p>12 the way I have answered the question.</p> <p>13 Q. My recollection, Mr. Kaufman -- I am</p> <p>14 certainly not intentionally trying to confuse</p> <p>15 you and I apologize if it's happening</p> <p>16 unintentionally. My recollection of your</p> <p>17 testimony earlier today is I asked you if you</p> <p>18 knew who owned Anderson Blake and you said you</p> <p>19 didn't recall.</p> <p>20 MS. GASTWIRTH: That's correct.</p> <p>21 A. That's correct.</p> <p>22 MS. GASTWIRTH: You were asking for</p> <p>23 a particular ownership. Now you are asking</p> <p>24 for did he work with Anderson Blake. You</p> <p>25 didn't ask --</p>
<p style="text-align: right;">Page 88</p> <p>1 Kaufman</p> <p>2 MR. SEFF: Okay, let's clarify it</p> <p>3 further then. It was just an honest</p> <p>4 misunderstanding then.</p> <p>5 MS. GASTWIRTH: Well, that's why I</p> <p>6 tried clearing it up.</p> <p>7 MR. SEFF: Let's clarify it now.</p> <p>8 That's why we are here.</p> <p>9 Q. Did you understand, Mr. Kaufman,</p> <p>10 that Mr. Melius, Gary Melius, had an ownership</p> <p>11 interest in Anderson Blake during the period of</p> <p>12 January '98 to April 2000?</p> <p>13 A. I did not know the ownership</p> <p>14 structure of Anderson Blake.</p> <p>15 Q. Whatever the structure was, did you</p> <p>16 have any understanding of whether Mr. Melius</p> <p>17 had an interest in it?</p> <p>18 A. What do you mean by "interest"?</p> <p>19 Q. A financial interest. Stock,</p> <p>20 ownership, anything.</p> <p>21 A. I did not know the ownership</p> <p>22 structure of Anderson Blake. I did not know</p> <p>23 Gary's -- what his percentage of ownership was</p> <p>24 within Anderson Blake. I am not -- I wasn't</p> <p>25 aware of what his ownership percentage was or</p>	<p style="text-align: right;">Page 89</p> <p>1 Kaufman</p> <p>2 was not.</p> <p>3 Q. Did you know it was more than zero?</p> <p>4 A. I didn't know the ownership</p> <p>5 structure.</p> <p>6 Q. Again, the structure -- maybe we are</p> <p>7 talking about the same thing but we are using</p> <p>8 different words here. I am not so concerned</p> <p>9 with the structure as I am with the financial</p> <p>10 interest. It could be a corporation, it could</p> <p>11 be a partnership, it could be a sole</p> <p>12 proprietorship, it could be an LLC. I am not</p> <p>13 interested in that aspect of it. I am</p> <p>14 interested in what you knew at the time about</p> <p>15 his financial interest in the company of any</p> <p>16 sort, whether it was stock --</p> <p>17 A. Of which company?</p> <p>18 Q. Anderson Blake Construction Corp.</p> <p>19 A. I didn't know the ownership</p> <p>20 structure. I didn't know what his financial</p> <p>21 ownership was within Anderson Blake.</p> <p>22 Q. If any.</p> <p>23 A. If it was 1 percent, 99 percent, 50</p> <p>24 percent. I did not know the ownership</p> <p>25 structure.</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 Kaufman</p> <p>2 Q. And you didn't inquire, I gather?</p> <p>3 A. I don't recall. I mean, there was</p> <p>4 no -- he was involved in the enterprise, he was</p> <p>5 involved in, you know, Anderson Blake. I never</p> <p>6 knew the ownership. I didn't know the</p> <p>7 ownership structure.</p> <p>8 Q. So as far as you knew, he could have</p> <p>9 owned zero percent or he could have owned a</p> <p>10 hundred percent?</p> <p>11 A. Correct.</p> <p>12 Q. And you didn't inquire or you don't</p> <p>13 recall if you inquired?</p> <p>14 A. I don't recall.</p> <p>15 Q. And I gather the same would go for</p> <p>16 Archon, you don't know the ownership structure</p> <p>17 of Archon?</p> <p>18 A. That's correct.</p> <p>19 Q. And you don't know what percentage,</p> <p>20 if any, he owned of Archon?</p> <p>21 A. That's correct.</p> <p>22 Q. And you don't recall if you</p> <p>23 inquired?</p> <p>24 A. I don't recall.</p> <p>25 MR. SEFF: Off the record.</p>	<p style="text-align: right;">Page 91</p> <p>1 Kaufman</p> <p>2 (Discussion off the record.)</p> <p>3 Q. Just getting back to this issue with</p> <p>4 Mr. Melius and Anderson Blake, separate and</p> <p>5 apart from any ownership interest he may have</p> <p>6 had, what business role or roles did he play in</p> <p>7 Anderson Blake? Was he in a decision-making</p> <p>8 capacity at Anderson Blake?</p> <p>9 A. I don't know.</p> <p>10 Q. Who at Anderson Blake did you know</p> <p>11 had the capacity or the authority to make</p> <p>12 decisions?</p> <p>13 A. Bill Thornton, I believe, was the</p> <p>14 active member that I interfaced with from time</p> <p>15 to time.</p> <p>16 Q. Did you ever hear the name Richard</p> <p>17 Bellando?</p> <p>18 A. I don't recall.</p> <p>19 Q. I take it from that answer that you</p> <p>20 don't recall interfacing with Mr. Bellando; is</p> <p>21 that right?</p> <p>22 A. Yes, I just don't recall.</p> <p>23 Q. Do you know who the President of</p> <p>24 Anderson Blake Construction was in January of</p> <p>25 '98 when that construction contract was signed?</p>
<p style="text-align: right;">Page 92</p> <p>1 Kaufman</p> <p>2 A. No.</p> <p>3 Q. All right, Mr. Kaufman, I am going</p> <p>4 to show you a document that's previously been</p> <p>5 marked as deposition Exhibit 17 and ask you to</p> <p>6 take a look at that. My question will be have</p> <p>7 you ever seen it before.</p> <p>8 (Document review.)</p> <p>9 A. I don't recall.</p> <p>10 Q. You don't recall if you have seen</p> <p>11 Exhibit 17 before? Is that what you said? I</p> <p>12 didn't hear it.</p> <p>13 A. That's correct.</p> <p>14 Q. It appears to be a fax cover sheet</p> <p>15 from David Larson to Mr. Melius. Do you know</p> <p>16 David Larson?</p> <p>17 A. The name sounds familiar, but I</p> <p>18 don't recall who he is.</p> <p>19 Q. It appears to be on company</p> <p>20 stationery, a company called B&L Financial,</p> <p>21 Inc., out of Minnesota. Is that company</p> <p>22 familiar to you?</p> <p>23 A. No.</p> <p>24 Q. It's addressed to Mr. Melius at</p> <p>25 President R.C.-St. Regis Management Company.</p>	<p style="text-align: right;">Page 93</p> <p>1 Kaufman</p> <p>2 Did Mr. Melius have any role in</p> <p>3 President R.C.-St. Regis Management Company in</p> <p>4 November of 1998?</p> <p>5 A. No.</p> <p>6 Q. Mr. Kaufman, do you recognize the</p> <p>7 handwriting in the upper right-hand corner of</p> <p>8 Exhibit 17 where it says "St. Regis, Miller</p> <p>9 Schroeder"?</p> <p>10 A. No.</p> <p>11 Q. How about the handwriting in the</p> <p>12 middle of the document in the section beginning</p> <p>13 with the words "related to our conversation"</p> <p>14 where there are a series of lines with numbers</p> <p>15 entered on them, do you recognize that</p> <p>16 handwriting?</p> <p>17 A. No.</p> <p>18 Q. Were you aware, Mr. Kaufman, that</p> <p>19 Mr. Larson and Mr. Melius were speaking in</p> <p>20 November of 1998 regarding the installation of</p> <p>21 VLTs in the casino?</p> <p>22 MS. GASTWIRTH: Objection.</p> <p>23 Q. If you know.</p> <p>24 A. I have no recollection.</p> <p>25 Q. Any idea why Mr. Larson would be</p>

<p style="text-align: right;">Page 246</p> <p>1 Kaufman</p> <p>2 was going to be my next question.</p> <p>3 Q. Mr. Kaufman, this is a contract</p> <p>4 between President and Archon and it's signed on</p> <p>5 behalf of Archon on the last page by</p> <p>6 Mr. Schiffman and there is a signature line</p> <p>7 there to the left of Mr. Schiffman's signature</p> <p>8 for your signature, although this copy is</p> <p>9 unsigned, and my question was going to be do</p> <p>10 you recall if you ever signed this document. I</p> <p>11 gather from Loretta's comment that there is a</p> <p>12 signed version.</p> <p>13 MS. GASTWIRTH: But I don't know</p> <p>14 where you got this one from.</p> <p>15 MR. SEFF: Well, if there is a</p> <p>16 signed version that you have, I would be</p> <p>17 interested to see it.</p> <p>18 MS. GASTWIRTH: I think we produced</p> <p>19 it. I don't know where you got this as an</p> <p>20 exhibit for today.</p> <p>21 MR. SEFF: Well, this has previously</p> <p>22 been marked. This has been used before.</p> <p>23 MS. GASTWIRTH: I know, but it</p> <p>24 doesn't mean that these were documents that</p> <p>25 we produced.</p>	<p style="text-align: right;">Page 247</p> <p>1 Kaufman</p> <p>2 Q. The question is did you ultimately</p> <p>3 sign this contract, if you know?</p> <p>4 A. I don't recall.</p> <p>5 MR. SEFF: But, Loretta, you believe</p> <p>6 that he did?</p> <p>7 MS. GASTWIRTH: I don't know if it</p> <p>8 was him or Walter.</p> <p>9 MR. SEFF: Well, the construction</p> <p>10 contract was Walter.</p> <p>11 MS. GASTWIRTH: My recollection is</p> <p>12 these numbers came from the Tribe.</p> <p>13 MR. SEFF: That's true.</p> <p>14 MS. GASTWIRTH: I actually had to</p> <p>15 Bates stamp those, but this one doesn't</p> <p>16 have those numbers, so...</p> <p>17 MR. SEFF: If you have a signed</p> <p>18 version of it that hasn't been produced, we</p> <p>19 would like it.</p> <p>20 MS. GASTWIRTH: We have produced it.</p> <p>21 It's in the 50,000 pages that are out there</p> <p>22 in the case --</p> <p>23 MR. SEFF: It's buried in there, is</p> <p>24 what you are saying.</p> <p>25 MS. GASTWIRTH: Right. I can't</p>
<p style="text-align: right;">Page 248</p> <p>1 Kaufman</p> <p>2 really go back and look for it. I can't</p> <p>3 look at these documents anymore. It takes</p> <p>4 up an entire wall in my file room.</p> <p>5 MR. SEFF: It takes up more than a</p> <p>6 wall in our office, if it makes you feel</p> <p>7 any better.</p> <p>8 MS. GASTWIRTH: It's a waste of</p> <p>9 trees.</p> <p>10 Q. Mr. Kaufman, do you know the name Al</p> <p>11 or Alfred Crary, C-R-A-R-Y?</p> <p>12 A. What?</p> <p>13 Q. Do you know the name Alfred Crary?</p> <p>14 A. It sounds familiar.</p> <p>15 Q. Who is Mr. Crary, if you know?</p> <p>16 A. I don't have a clear recollection.</p> <p>17 Maybe you can facilitate my recollection.</p> <p>18 Q. I am looking for a document that</p> <p>19 might do that.</p> <p>20 All right, Mr. Kaufman, I am going</p> <p>21 to show you a document that's previously been</p> <p>22 marked as Exhibit 14 and ask you to take a look</p> <p>23 at that letter and tell me if you have ever</p> <p>24 seen it before.</p> <p>25 (Document review.)</p>	<p style="text-align: right;">Page 249</p> <p>1 Kaufman</p> <p>2 A. No, I haven't seen it.</p> <p>3 Q. I see you smiling.</p> <p>4 A. It does refresh my recollection.</p> <p>5 Q. I see you smiling and almost</p> <p>6 laughing there. What about that letter is</p> <p>7 causing you to grin, if anything?</p> <p>8 A. Just the circumstances.</p> <p>9 Q. What about the circumstances of --</p> <p>10 we will work off the same copy here. I</p> <p>11 apologize.</p> <p>12 Who is Mr. Crary? Now that you have</p> <p>13 had a chance to look at Exhibit 14, who is he?</p> <p>14 A. He was an ex-state police guy and</p> <p>15 for some reason Gary -- and I never knew Gary</p> <p>16 actually made him an offer, but Gary had</p> <p>17 recommended him to call me for a position of</p> <p>18 head of security or something involving</p> <p>19 security. I did meet him. I wasn't overly</p> <p>20 impressed with him. I never made him an offer.</p> <p>21 But now I have this -- Gary must have told him</p> <p>22 that he would get an offer, actually made him</p> <p>23 an offer, and we never made him an offer.</p> <p>24 Q. What Mr. Melius says in Exhibit 14</p> <p>25 to Mr. Crary is -- I read it slightly</p>

63 (Pages 246 to 249)